

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4943 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI BHALABHAI PATEL

Versus

EXECUTIVE ENGINEER

Appearance:

MR SV RAJU for Petitioners
MR RC JANI for Respondent No. 1
MS NANDINI JOSHI, AGP for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.C.PATEL

Date of decision: 28/09/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

By means of filing this Appeal under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, the appellants who are original claimants have challenged legality of judgment dated November 28, 1997 rendered by the learned Assistant District Judge, Mehsana in Land Acquisition Reference No.470 of 1991 whereby they are awarded compensation at the rate of Rs.40/- per sq.m. for their acquired lands and claimed that they should be awarded compensation at the rate of Rs.150/- per sq.m.

2. The Executive Engineer, Narmada Yojana, Main Canal Construction Division, Ahmedabad had proposed to the State Government to acquire agricultural lands of village Jaspur, Taluka Kalol, District Mehsana for the public purpose of Narmada Yojana Canal. On scrutiny of the said proposal, the State Government was satisfied that agricultural lands belonging to the appellants and others situated at village Jaspur were likely to be needed for the said public purpose. Therefore, Notification under Section 4(1) of the Land Acquisition Act, 1894 (the 'Act' for short) was issued which was published in the Official Gazette on December 3, 1985. The appellants and others whose lands were proposed to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Yojana, Ahmedabad had forwarded his report to the State Government, as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural lands of the appellants and others situated at village Jaspur which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of Narmada Yojana Canal. Therefore, declaration under Section 6 of the Act was made which was published in the Official Gazette on May 26, 1987. The interested persons were thereafter served with notices for determination of compensation. The appellants and others appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.150/- per sq.m.. However, having regard to the materials placed before him, the Land Acquisition Officer by his award dated May 17, 1989 offered compensation to the claimants at the rate of Rs.3/- per sq.m. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they accepted the amount of compensation under protest and applied to the Special Land Acquisition Officer to refer the matters to the court for determination of appropriate amount of

compensation payable to them. Accordingly, references were made to the District Court, Mehsana which were registered as Land Acquisition Reference Nos. 773/90 to 774/90, 777/90 to 778/90 and 470/91.

3. In the Reference Applications, it was pleaded by the appellants and other claimants that their lands which were acquired were highly fertile and having regard to the overall development which had taken place near the acquired lands as well as income derived by the claimants from the sale of agricultural produces, they should have been awarded compensation at the rate of Rs.150/- per sq.m.

4. The Reference Applications were contested by the respondents vide written statement Exh.6. In the written statement, it was pleaded by the respondents that the determination of compensation by the Special Land Acquisition Officer was just, fair as well as adequate and therefore, the Reference Applications should be dismissed. It was mentioned therein that the claimants were not entitled to enhanced compensation, as claimed in Reference Applications because the Land Acquisition Officer had taken into consideration the use of the lands, the potential value of the lands acquired, fertility, facilities available, size of the lands etc.

5. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.7. On behalf of the claimants, witness Chimanlal Shambhunath Patel who was claimant in Land Acquisition Reference No.778/90 was examined at Exh.12. The witness gave particulars about the lands acquired and also mentioned about the development which had taken place in the nearby areas. The witness claimed that Kalol town was at a distance of 7 kms. from Jaspur whereas boundary of Gandhinagar was at a distance of 9 kms. from Jaspur. According to the witness, Unava was at a distance of 10 kms. whereas IFFCO factory was at a distance of 3 kms. from village Jaspur. The witness asserted in his evidence that Khodiar Railway Station was at a distance of 3 kms. whereas Gandhinagar-Sarkhej Highway was at a distance of 3 kms. from his village. The witness deposed before the court that new Gujarat High Court building, Bhagwat Vidyapith, Nirma Foundation Engineering College and Gurukul were in the vicinity of village Jaspur. The witness further claimed that the boundaries of village Jaspur and village Vadsar were common and village Saij was at a distance of 3 kms. from village Jaspur. The witness further claimed that the claimants were able to take three crops in a year and

were earning Rs.40,000/- per year by way of sale of agricultural produces. The witness produced previous awards of the Reference Court at Exh.11 and claimed that the claimants should be paid compensation on the basis of the said award. In cross-examination, the witness admitted that he had no documentary evidence to establish his claim that the claimants were earning Rs.40,000/- per bigha by way of sale of agricultural produces. It is relevant to notice that no evidence was led by the respondents in support of the averments made in the written statement. On appreciation of evidence led by the claimants, the Reference Court deduced that previous award produced at Exh.11 was neither comparable nor relevant for the purpose of assessing market value of the lands acquired in the present case. Ultimately on analysis of evidence on record, the Reference Court, by judgment and award dated November 28, 1997, held that the appellants and other claimants are entitled to compensation at the rate of Rs.40/- per sq.m. giving rise to the present Appeal.

6. Mr. S.V. Raju, learned counsel for the appellants submitted that previous award produced at Exh.11 is relevant as well as comparable because in the said case also agricultural lands of village Jaspur were acquired pursuant to publication of notification under Section 4(1) of the Act on December 3, 1985 and therefore, it should be relied upon for assessing market value of the lands acquired in this case, more particularly when the said judgment is upheld by the Supreme Court. In First Appeals No.300/98 to 314/98 which were directed against the previous award Exh.11, the High Court, by judgment dated June 28, 1999, has held that the claimants therein were entitled to compensation at the rate of Rs.52/- per sq.m. and therefore, the appellants should also be awarded compensation at the rate of Rs.52/- per sq.m. The learned counsel emphasised that other agricultural lands of village Jaspur were acquired pursuant to publication of notification under Section 4(1) of the Act on January 2, 1986 and though the Reference Court in Land Acquisition Cases Nos.464/91, 761/90, 768/90 and 767/90 had enhanced compensation from Rs.3/- per sq.mt. to Rs.40/- per sq.mt. by award dated November 28, 1997, the High Court, in First Appeals Nos.5760/98 to 5763/98 decided on July 7, 1999 had enhanced compensation to Rs.52/- per sq.mt. and therefore on the basis of judgment of High Court also, the claimants in this case should be awarded compensation at the rate of Rs.52/- per sq.mt.

7. Ms. Nandini Joshi, learned Assistant Government

Pleader submitted that in First Appeal No.5097/98 to First Appeal No.5101/98 which were directed against the award which is impugned in the present Appeal, the High Court by judgment dated March 18, 1999 has confirmed the finding of Reference Court that the claimants are entitled to compensation at the rate of Rs.40/- per sq.m. while dismissing those Appeals summarily and therefore, the present Appeal should be dismissed.

8. Mr. R.C. Jani, learned counsel appearing for Respondent No.1 has also pleaded that in view of the judgment of the High Court in First Appeal No.5097/98 to First Appeal No.5101/98, the appeal should be dismissed.

9. We have heard the learned counsel for the parties and taken into consideration oral as well as documentary evidence produced by the parties on the record of the case. In this case, the claimants have not based their claim for enhanced compensation either on sale instances or yield method and have relied upon previous award produced at Exh.11 to substantiate their claim that they are entitled to compensation at the rate of Rs.150/- per sq.m.

10. Exh.11 which is previous award indicates that agricultural lands belonging to others situated at village Jaspur were also acquired pursuant to publication of Notification issued under Section 4(1) of the Act on December 3, 1985 for Narmada Canal Yojana. In the case of other claimants also, the Land Acquisition Officer by his award dated May 17, 1989 had offered compensation to the claimants at the rate of Rs.3/- per sq.m. Thereupon, the claimants had sought references which were made by the Special Land Acquisition Officer to District Court, Mehsana and they were numbered as Land Reference Cases No.775/90, 779/90 to 783/90, 468/91, 469/91 and 360/92 to 367/92. The Reference Court by judgment dated June 23, 1997 had held that the claimants were entitled to additional compensation at the rate of Rs.69/- per sq.m. i.e. in all Rs.72/- per sq.mt. Thereupon, the State Government had preferred First Appeal No.300/98 to First Appeal No.314/98 and the High Court, by judgment dated June 28, 1999 held that the claimants were entitled to compensation at the rate of Rs.52/- per sq.m. It may be stated that alongwith First Appeal No.300/98 to First Appeal No.314/98, other group of first appeals i.e. First Appeal No.43/98 to First Appeal No.54/98 and First Appeal No.315/98 to First Appeal No.328/98 were also decided. The judgment rendered by the High Court was challenged before the Supreme Court in Special Leave to Appeal (Civil)..CC..1774-1814/2000 and the Special Leave

Petitions were dismissed by the Supreme Court vide order dated March 16, 2000. It is also relevant to notice that for Narmada Yojana Canal, agricultural lands from this very village were acquired pursuant to publication of Notification under Section 4(1) of the Act in the Official Gazette on January 2, 1986. Therein also, the claimants had demanded compensation at the rate of Rs.150/- per sq.m. but the Land Acquisition Officer by his award dated May 17, 1989 had offered compensation to the claimants at the rate of Rs.3/- per sq.m. Thereupon, references were sought and the Reference Court in Land Acquisition Reference Cases No.761/90, 766/90, 767/90 and 464/91 by judgment dated November 28, 1997 held that the claimants were entitled to compensation at the rate of Rs.40/- per sq.m. Thereupon, the claimants had instituted First Appeal No. 5760/98 to First Appeal No.5763/98 and the High Court by judgment dated July 7, 1999 has held that the claimants were entitled to compensation at the rate of Rs.52/- per sq.m.

11. The submission that in view of the judgment of the High Court rendered in First Appeal No.5097/98 to First Appeal No.5101/98 and First Appeal No.409198, the compensation payable to the claimants cannot be more than Rs.40/- per sq.m. has no merits. It is true that in those appeals, this very Notification which is being considered in this appeal was considered and the award of the Reference Court holding that the value of the lands acquired was Rs.40/- per sq.mt. was upheld. However, while dismissing those matters, the court had not examined the question as to whether the claimants were entitled to more compensation than determined by the Reference Court. What was held by the court in those First Appeals was that challenge made by the State Government to the determination of compensation at the rate of Rs.40/- per sq.m. was not well founded. Moreover, from the judgment of High Court it is evident that those First Appeals were rejected at the admission stage without issuing notices to the claimants. Similar plea raised in First Appeal No.43/98 to First Appeal No.54/98 with First Appeal No.300/98 to First Appeal No.314/98 and First Appeal No.315/98 to First Appeal No.320/98 was rejected by the court vide judgment dated June 28, 1999 and as observed by us earlier, the Special Leave Petitions which were directed against the judgment rendered in the above numbered Appeals were dismissed by the Supreme Court.

12. The previous award relied upon by the claimants which is produced at Exh.11 is relevant as well as comparable for the purpose of assessing market value of

the lands acquired in the instant case as that award related to the lands of this very village and were acquired under the Notification of same date. Evidence of witness Chimanlal Patel Exh.12 shows that agricultural land previously acquired were similar to lands acquired in this case. No evidence was led by the respondents to show that the lands which were subject matter of Exh.11 were better in quality than the lands acquired in the present case. It is well settled that previous award of the court which has become final and which relates to lands similar to the lands acquired subsequently from same village can be made basis for determining market value of lands acquired subsequently. The Reference Court has not assigned cogent reasons as to why Exh.11 previous award is not a relevant piece of evidence and therefore, finding of Reference Court that Exh.11 is not relevant is set aside. On overall view of the matter, we are of the opinion that the claimants in the present Appeal would also be entitled to compensation at the rate of Rs.52/- per sq.m. more particularly, in view of the two previous judgments of the High Court to which reference is made earlier.

13. For the foregoing reasons, the Appeal partly succeeds. It is held that the claimants shall be entitled to compensation at the rate of Rs.52/- per sq.m. It is clarified that the claimants will not be entitled to interest on solatium and solatium on additional amount payable under Section 23(1-A) of the Act. Rest of the directions given by the Reference Court regarding payment of solatium, interest etc. are not disturbed and are hereby upheld. There shall be no orders as to cost. The office is directed to draw decree in terms of this judgment.

(J.M. Panchal, J.)

(M.C. Patel, J.)

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